

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 413 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

UNION OF INDIA (NOTICE TO BE SERVED THROUGH SECRETARY

Appearance:

MR MS SANGITA PAHWA for MR PM THAKKAR for Petitioner
MR ASIM PANDYA for Respondent No. 1, 2, 3
MR BJ SHELAT for Respondent No.4

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 05/12/2000

ORAL JUDGEMENT

The petitioner challenges the action of the respondents in insisting upon the petitioner to pay customs duty leviable on the goods imported by it under Chapter 47 of the First Schedule to the Customs Tariff Act, 1947, as well as levy of additional duty u/s 3 of the Customs Act, 1962. A declaration is sought that the goods imported by the petitioner are not liable to payment of customs duty and that they are exempt from the whole of the duty of customs and the whole of the additional duty u/s 3 of the Act by virtue of the Notification No.234 of 1979-Customs dated 5.12.1979, as amended by the Notification No.126 of 1980 - Customs dated 5.7.1980.

2 The petitioner is a manufacturer of pulp and paper and for the purpose of such manufacture the petitioner uses waste paper as its raw-material which was subjected to customs duty under Chapter 47.02 of the Customs Tariff Act, 1975, as it stood at the relevant time. The case of the petitioner is that the Central Government by the said Notification, issued under Section 25(1) of the Customs Act, 1962, exempted waste paper falling within Chapter 47 of the First Schedule to the Customs Tariff Act, 1975, when imported into India for the manufacture of pulp for use in paper making, from the whole of the duty of the customs leviable thereon under the First Schedule and from the whole of the additional duty leviable u/s 3 of the Customs Act, provided that the importer shall, by the execution of a Bond in such form for such sum as may be prescribed by the Assistant Collector of Customs, binds himself to pay on demand, in respect of such quantity of waste paper as is not proved to the satisfaction of the Asst. Collector of Customs to have been used for the aforesaid purpose, an amount equal to the duty leviable on such quantity, but for the exemption contained in the said notification, at the time of importation.

3 According to the petitioner, the first consignment of 125 waste paper bales of old corrugated cartons imported by them arrived from Singapore. As regards this consignment the respondents were of the opinion that the goods were not a waste paper. Since the petitioner was in urgent need of the consignment, the proper Officer was requested to allow the clearance of the goods under a provisional assessment u/s 18 of the Customs Act pending final adjudication. The petitioner thereafter convinced the respondents to permit the

clearance of the said goods on furnishing a Bank Guarantee for the whole of the amount and on petitioner's executing a bond in favour of the respondents. The case of the petitioner was that other two consignments were to reach India from Sydney as reflected from the documents at Annexure-F to the petition. It is contended that though the goods are exempted by the above notification, the respondents are insisting on recovery of the duty contrary to such exemption. It is also contended that as per the compilation of Paper Stocks Standards and Practices, issued by Paper Stock of America and other documentary evidence, old corrugated cartons are a recognised grade of waste paper used for the manufacture of pulp for making paper or paper board.

4 When this petition was admitted on 20th February 1981 ad interim relief was granted in terms of para 22(C) in which a direction was sought on the respondents to permit the clearance of the goods under provisional assessment, interim relief was granted on the condition that the petitioner and the two Directors of the petitioner-company shall execute bonds in the sum of Rs.1 lakh. It was ordered that the bank guarantee which was already executed in the sum of Rs.25,000 and the bonds which were also already executed in the further sum of Rs.2,25,000/- as well as the bank guarantee and bonds directed to be executed by this interim order will cover three consignments all of which had arrived in India. Accordingly, by virtue of the interim order the goods seem to have been released on the basis of the bank guarantees and the bonds mentioned in the interim order dated 29.2.1981.

5 It has been contended on behalf of the petitioner that the documents which are annexed to the petition show that the old corrugated cartons which were imported were waste paper. Since waste paper was exempted from payment of duty by virtue of the Notification dated 5.12.1979 the proper Officer acted without authority by insisting on the payment of duty on these goods.

6 There is no dispute about the fact that by virtue of the Notification dated 5.12.1979, issued u/s 25(1) of the Customs Act, 1962, the Central Government had granted exemption in respect of waste paper falling under Chapter 47 of the First Schedule to the Customs Tariff Act, 1975, when imported for the manufacture of pulp for the use in paper making. It would be noted that the said notification granting exemption required the importer of such goods to execute a bond binding himself to pay on demand the amount equal to the duty leviable on such

quantity of waste paper as was not used for the said purpose.

7 Section 17 of the Customs Act, 1962, provides for assessment of duty. For that purpose the proper officer is required to examine and that the goods as contemplated by sub-section (1) of Section 17 and after such examination and testing of the goods to assess the duty if any leviable on such goods under sub-section (2) of Section 17. It is, inter alia, provided by sub-section (3) of Section 17 that for the purpose of assessing duty under section (2) the proper Officer may require the importer to produce any contract, broker's note, policy of insurance, catalogue or other documents whereby the duty leviable on the imported goods can be ascertained and to furnish any information required for such ascertainment, which it is in his power to produce or furnish and thereupon the importer shall produce such documents and furnish such information. It is obvious that for the purpose of deciding as to what duty, if any, is leviable on the goods which are imported, the proper officer has to by examining and testing the goods ascertain as to in what category they fall and what rate of duty they attract under the relevant provisions. Mere declaration of the goods by the importer is not binding on the proper officer who is empowered to examine and test the goods to find out as to whether they are the same goods as are declared in the documents. If he has any doubt about the nature of the goods, he has to call upon the importer to furnish the requisite information and documents on the question of the nature of the goods. Therefore, even in a case where exemption notification is issued, the proper officer has to ascertain the nature of the goods which are said to have been imported, to find out whether they qualified for exemption or not. In the present case, whether the goods which are described as waste paper by the petitioner were really waste paper or not was a matter to be examined and determined by the proper officer under sub-section (3) of Section 17 of the said Act. Merely from the description of the goods as waste paper this Court cannot come to any conclusion because, the process of the proper officer examining and testing the goods to ascertain their nature cannot be short-circuited by a mere theoretical inference from the description of the goods in the documents. It would therefore be for the proper officer to ascertain in accordance with the provisions of Section 17(3) of the Act as to what is the nature of the goods and whether they qualified for the exemption granted in respect of waste paper under the notification dated 5.12.1979 on which the petitioner relies.

8 By virtue of an interim relief granted in the present proceedings the petitioner has removed the goods in question on a provisional basis by furnishing bank guarantees and bonds. The assessment of the goods will depend upon the fact whether the exemption applies or not which in turn depends upon the actual nature of the goods which were imported. The proper Officer will have to ascertain from the documentary and other evidence that may be produced before him as to whether the old corrugated cartons actually imported by the petitioner under the invoices in question were in fact waste paper. The notification exempting the waste paper refers to waste paper falling within Chapter 47 of the First Schedule. Item 47.02 speaks of waste paper etc. fit only for use in paper making. Therefore, the question which will have to be examined is whether the old corrugated cartons which are described as waste paper were goods which can be said to be waste paper fit only for use in paper-making. This could be judged only by determining the actual nature of the goods which were imported under the invoices in question and that is the function of the proper officer u/s 17(3) of the Act. Therefore, at this stage no declaration as is prayed for by the petitioner can be granted. The petition is therefore rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

9 It will be open to the proper officer to make the final assessment in accordance with the provisions of Section 17(3) of the Act (if not already made) and take his own decision in the matter after giving an opportunity of hearing to the petitioner in accordance with law. The guarantees and bonds which the petitioner has executed will enure till the final assessment is made and will be subject to the outcome of such assessment.

(mohd)